

AMENDED IN ASSEMBLY JANUARY 7, 2002

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

ASSEMBLY BILL

No. 728

Introduced by Assembly Member Correa

February 22, 2001

~~An act to amend Section 17538.9 of the Business and Professions Code, and to amend Section 1013 of the Public Utilities Code, relating to public utilities. An act to amend Section 7071.11 of the Business and Professions Code, relating to contractors.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 728, as amended, Correa. ~~Public utilities: telephone prepaid debit cards. Contractors.~~

Existing law requires the surety of a contractor to notify the Registrar of Contractors of any payment on any claim against the contractor's bond within 30 days of making the payment. Existing law, with specified exceptions, provides that any judgment or admitted claim against, or good faith payment from, a bond shall constitute grounds for disciplinary action against a contractor by the Contractors' State License Board.

This bill would provide that the surety is not required to notify the Registrar of Contractors of any judgment or admitted claim against, or good faith payment from, a bond, if the contractor has, in writing, timely instructed the surety not to make payment on certain specific grounds.

This bill, with respect to payments made by a surety that are reported to the Registrar of Contractors, would provide that the contractor's license shall be suspended by operation of law if proof of payment of the amount owed to the surety has not been made by the contractor within

90 days after the contractor is notified to that effect by the Contractors' State License Board. This bill would also provide that a contractor's license may not be renewed, reissued, or reinstated while any judgment or admitted claim in excess of the amount of the contractor's bond remains unsatisfied or while the surety remains unreimbursed for loss and expense sustained on the bond. The bill would provide that these license suspension provisions shall not apply if the contractor has filed for bankruptcy.

~~(1) Existing law applies specified standards and requirements for consumer disclosure and services with respect to the advertising and sale of prepaid calling cards and prepaid calling services. Existing law requires each company to establish and maintain a toll-free customer service telephone number with a live operator to answer incoming calls 24 hours a day, 7 days a week, through which consumers may lodge relevant complaints and through which the specified information may be obtained by consumers.~~

~~This bill would require that this consumer information include the toll-free customer service telephone number to call if a customer wishes to file a complaint with the Public Utilities Commission.~~

~~(2) Existing law requires any entity offering the services of telephone prepaid debit cards to comply with specified registration requirements. Existing law authorizes the commission to require, as a precondition to registration, the procurement of a performance bond sufficient to cover taxes or fees, or both, collected from customers and held for remittance and advances or deposits that the telecommunications company may collect from its customers.~~

~~This bill would require that the performance bond of specified entities required to register also include the value of outstanding debit cards for the purpose of refunding or honoring the time left on outstanding cards to resellers and consumers if the interexchange carrier ceases business and cannot do so. Because violations of orders, decisions, rules, or other requirements of the Public Utilities Commission are misdemeanors, this bill would impose a state-mandated local program by creating new crimes.~~

~~(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that no reimbursement is required by this act for a specified reason.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: ~~yes~~ no.

The people of the State of California do enact as follows:

1 ~~SECTION 1. Section 17538.9 of the Business and Professions~~

2 *SECTION 1. Section 7071.11 of the Business and Professions*

3 *Code is amended to read:*

4 7071.11. (a) A copy of the complaint in a civil action
5 commenced by a person claiming against a bond required by this
6 article shall be served by registered or certified mail upon the
7 registrar by the clerk of the court at the time the action is
8 commenced and the registrar shall maintain a record, available for
9 public inspection, of all actions so commenced. The aggregate
10 liability of a surety on a claim for wages and fringe benefits
11 brought against any bond required by this article, other than a bond
12 required by Section 7071.8, shall not exceed the sum of four
13 thousand dollars (\$4,000). If any bond which may be required is
14 insufficient to pay all claims in full, the sum of the bond shall be
15 distributed to all claimants in proportion to the amount of their
16 respective claims. Any action, other than an action to recover
17 wages or fringe benefits, against a contractor's bond or a bond of
18 a qualifying individual filed by an active licensee shall be brought
19 within two years after the expiration of the license period during
20 which the act or omission occurred, or within two years of the date
21 the license of the active licensee was inactivated, canceled, or
22 revoked by the board, whichever first occurs. Any action, other
23 than an action to recover wages or fringe benefits, against a
24 disciplinary bond filed by an active licensee pursuant to Section
25 7071.8 shall be brought within two years after the expiration of the
26 license period during which the act or omission occurred, or within
27 two years of the date the license of the active licensee was
28 inactivated, canceled, or revoked by the board, or within two years
29 after the last date for which a disciplinary bond filed pursuant to
30 Section 7071.8 was required, whichever date is first. A claim to
31 recover wages or fringe benefits shall be brought within six
32 months from the date that the wage or fringe benefit delinquencies
33 were discovered, but in no event shall a civil action thereon be
34 brought later than two years from the date the wage or fringe
35 benefit contributions were due.

(b) When the surety makes payment on any claim against a bond required by this article, whether or not payment is made through a court action or otherwise, the surety shall, within 30 days of the payment, notify the registrar *of any judgment or admitted claim against, or good faith payment from, a bond required by this article except for those cases of good faith payment where the licensee has, in writing, timely instructed the surety not to make payment from the bond on his or her account, upon the specific grounds that (1) the claim is opposed by the licensee, and (2) the licensee has, in writing, previously directed to the surety a specific and reasonable basis for his or her opposition to payment.* The notice shall contain, on a form prescribed by the registrar, the name and license number of the contractor, the surety bond number, the amount of payment, the statutory basis upon which the claim is made, and the names of the person or persons to whom payments are made.

~~(c) Any judgment or admitted claim against, or good faith payment from, a bond required by this article shall constitute grounds for disciplinary action against the licensee, except in those cases of good faith payment where the licensee has, in writing, timely instructed the surety not to make payment from the bond on his or her account, upon the specific grounds that (1) the claim is opposed by the licensee, and (2) the licensee has, in writing, previously directed to the surety a specific and reasonable basis for his or her opposition to payment. The license may not be reissued or reinstated while any judgment or admitted claim in excess of the amount of the bond remains unsatisfied. Further, the license may not be reissued or reinstated while any surety remains unreimbursed for loss and expense sustained on any bond issued for the licensee or for any entity of which any officer, director, member, partner, or qualifying person was an officer, director, member, partner, or qualifying person of the licensee while the licensee was subject to disciplinary action under this section. The board shall require the licensee to file a new bond in an amount as required pursuant to Section 7071.8.~~

(c) *The licensee shall have 90 days from the date of notification by the board to submit proof of payment of the actual amount owed to the surety. By operation of law, the license shall be suspended at the end of the 90 days if the payment of claim has not been satisfied. The license may not be renewed, reissued, or reinstated*

1 while any judgment or admitted claim in excess of the amount of
2 the bond remains unsatisfied. Further, the license may not be
3 renewed, reissued, or reinstated while any surety remains
4 unreimbursed for loss and expense sustained on any bond issued
5 for the licensee or for any entity of which an officer, director,
6 member, partner, or qualifying person was an officer, director,
7 member, partner, or qualifying person of the licensee while the
8 licensee was subject to disciplinary action under this section.

9 The licensee may provide the board with a notarized copy of an
10 accord reached with the surety to satisfy the debt in lieu of full
11 payment. By operation of law, failure to abide by the accord shall
12 result in the automatic suspension of any license to which this
13 section applies. A license that is suspended for failure to abide by
14 the accord can only be renewed or reinstated when proof of
15 satisfaction of all debts is made.

16 This subdivision shall not apply to a licensee when a bankruptcy
17 proceeding has been filed by the licensee.

18 (d) Legal fees may not be charged against the bond by the
19 board.

20 (e) In any case in which a claim is filed against a deposit given
21 in lieu of a bond by any employee or by an employee organization
22 on behalf of an employee, concerning wages or fringe benefits
23 based upon the employee's employment, claims for the
24 nonpayment shall be filed with the Labor Commissioner. The
25 Labor Commissioner shall, pursuant to the authority vested by
26 Section 96.5 of the Labor Code, conduct hearings to determine
27 whether or not the wages or fringe benefits should be paid to the
28 complainant. Upon a finding by the commissioner that the wages
29 or fringe benefits should be paid to the complainant, the
30 commissioner shall notify the registrar of the findings. The
31 registrar shall not make payment from the deposit on the basis of
32 findings by the commissioner for a period of 10 days following
33 determination of the findings. If, within the period, the
34 complainant or the contractor files written notice with the registrar
35 and the commissioner of an intention to seek judicial review of the
36 findings pursuant to Section 11523 of the Government Code, the
37 registrar shall not make payment, if an action is actually filed,
38 except as determined by the court. If, thereafter, no action is filed
39 within 60 days following determination of findings by the

1 commissioner, the registrar shall make payment from the deposit
2 to the complainant.

3 (f) Any action, other than an action to recover wages or fringe
4 benefits, against a deposit given in lieu of a contractor's bond or
5 bond of a qualifying individual filed by an active licensee shall be
6 brought within three years after the expiration of the license period
7 during which the act or omission occurred, or within three years
8 after the date the license was inactivated, canceled, or revoked by
9 the board, whichever first occurs. Any action, other than an action
10 to recover wages or fringe benefits, against a deposit given in lieu
11 of a disciplinary bond filed by an active licensee pursuant to
12 Section 7071.8 shall be brought within three years after the
13 expiration of the license period during which the act or omission
14 occurred, or within three years of the date the license of the active
15 licensee was inactivated, canceled, or revoked by the board, or
16 within three years after the last date for which a deposit given in
17 lieu of a disciplinary bond filed pursuant to Section 7071.8 was
18 required, whichever date is first. If the board is notified of a
19 complaint relative to a claim against the deposit, the deposit shall
20 not be released until the complaint has been adjudicated.

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23 **All matter omitted in this version of the**
24 **bill appears in the bill as introduced in the**
25 **Assembly, February 22, 2001 (JR 11)**
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